No. 92-1886

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In The

Supreme Court of the United States

October Term, 1992

JOE B. HUDDLESTON, in his capacity as Commissioner of Revenue of the State of Tennessee, and CHARLES W. BURSON, in his capacity as Attorney General of the State of Tennessee,

Petitioners,

v.

BLOOMINGDALE'S BY MAIL LTD.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Tennessee

BRIEF OF ALABAMA, ARIZONA, DELAWARE, IDAHO, MICHIGAN, MISSISSIPPI, MISSOURI, MONTANA, OKLAHOMA, UTAH, VIRGINIA AND WEST VIRGINIA SUPPORTING PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS CURIAE

The signatory states submit this brief as *amici curiae* in support of Tennessee's Commissioner of Revenue's petition for certiorari to review a decision of the Tennessee Supreme Court, *Bloomingdale's By Mail v. Commissioner*, 848 S.W.2d 52 (1992). *Amici* support the petition because this case raises issues of vital importance to all states. If the logic of the decision below is adopted by other jurisdictions, serious disruptions in the administration and collection of state taxes will result.

The question presented in this case is whether states must provide federal remedies not available in federal court when taxpayers challenge state tax liabilities in state court. This case emanates from a use tax assessment against Bloomingdale's for its failure to collect the tax on goods it shipped into Tennessee. After this Court's decision in *Quill Corp. v. North Dakota*, ___ U.S. ___, 112 S.Ct. 1904 (1992), Petitioners conceded that the assessment violated the commerce clause. Although Bloomingdale's had not filed a claim under 42 U.S.C. § 1983, it requested a fee award under 42 U.S.C. § 1988. The court below held federal law mandated awarding attorney's fees. That decision stems from a misunderstanding of the nature of §§ 1983 and 1988 and how those statutes operate in our federal system.

Section 1983 does not create any substantive rights. Nor does it, in and of itself, upset the balance between federal and state powers. The decision below affords this Court an opportunity to resolve the tension in the area of state taxation between the enforcement of federal rights

on the one hand, and the preservation of state sovereignty on the other. This Court has recognized the potential chilling effects of allowing actions for damages against state tax administrators. Allowing fee awards against them will have the same impact. Taxpayers will include federal counts in cases otherwise completely controlled by state tax law solely to preserve the opportunity to recover attorney's fees. Section 1988, however, was never intended to provide a windfall for attorneys. Nor should it be allowed to become a disruptive force in the administration of state taxes. For these reasons, having this Court consider this case is of vital importance to the states.

As federal restraints on state taxation continue to evolve, *see Quill*, 112 S.Ct. 1904; *Wisc. Dep't of Rev. v. Wrigley*, ___ U.S. ___, 112 S.Ct. 2447 (1992), states need to know: (1) the scope and extent of the financial exposure they will face when citizens challenge state taxes; and (2) the extent to which they can exercise their sovereign powers to limit such challenges. *Amici* ask this Court to grant the petition and provide appropriate guidance in these areas.

SUMMARY OF ARGUMENT

This Court has held that federal intrusions into the administration and collection of state taxes generally are inappropriate. Taxes are the lifeblood of state governments and, thus, necessary for the continued operation of our federal system of independent sovereigns. This Court, therefore, has read 28 U.S.C. § 1341, the Tax Injunction Act (the "Act"), expansively to preclude not

only injunctive relief in state tax matters, but also declaratory relief. Indeed, this Court has suggested that any relief that adversely affects the administration or collection of state taxes represents an unwarranted intrusion upon state sovereignty and is subject to the concerns of that Act. Hence, as a rule, federal law does not permit such intrusions.

This case concerns the extent, if any, to which 42 U.S.C. §§ 1983 and 1988 supersede the above principles. Specifically, the question is whether federal law requires states to provide a forum for taxpayers to seek damages and attorney's fees that would otherwise be available in federal court under §§ 1983 and 1988 if the dispute did not involve state taxes and was not therefore subject to the bar of the Act. This Court has not addressed the issue. *Amici* states join Petitioners in asserting that under the decisions of this Court and our system of federalism, states are not required to provide such a forum.

Significantly, neither § 1983 nor § 1988 create rights. Those statutes are only mechanisms for enforcing federally-created rights. Moreover, as suggested above, there is no federal right to disrupt the administration or collection of state taxes under our system of federalism. Thus, unless a state has, through the exercise of its sovereign powers, provided a cause of action for damages or attorney's fees in tax disputes, there is nothing to enforce under federal law. That is not a novel result. In non-tax contexts this Court has indicated that neither § 1983 relief nor a state-created equivalent always must be available. The administration and collection of state taxes, which go to the very heart of state sovereignty, are particularly well-suited to such a result.

Even if this Court believes that states must provide a forum for § 1983 claims in tax matters, *amici* assert that the Tax Injunction Act evidences the Congressional approval of an alternate relief scheme that precludes § 1983 relief. Finally, *amici* believe that at the very least, the states' sovereign right to tax, which is the very right to survive, and the associated concepts of comity and federalism demand that the discretion to award attorney's fees under § 1988 be eliminated in circumstances where the tax official, if the claim had been filed as an individual capacity suit, would prevail on qualified immunity grounds.

ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION TO RESOLVE UNCERTAINTY OVER THE AVAILABILITY OF § 1983 RELIEF IN STATE TAX DISPUTES

A. Introduction. Citizens may challenge non-federal governmental conduct they claim infringes on their federal constitutional or statutory rights under 42 U.S.C. § 1983.[1] Section 1983 generally provides a federal forum for federal constitutional or statutory claims. *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989). Stated another way, "[t]he very purpose of § 1983 was to interpose the

[1] Section 1983 provides: "Every person who, under color of any statute . . . of any state . . . subjects . . . any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured. . . . "

federal courts between the States and the people, as guardians of the people's *federal rights*. . . . " *Patsy v. Fla. Bd. of Regents*, 457 U.S. 496, 503 (1982) (quoting *Mitchum v. Foster*, 407 U.S. 225, 242 (1972)) (emphasis added). The statute does not create new rights, it merely facilitates enforcing certain federal rights by providing a federal forum. *Chapman v. Houston Welfare Rts. Org.*, 441 U.S. 600, 617 (1979).[2]

However extensive the reach of § 1983 in other contexts, there are special limiting concerns when the dispute involves the assessment and collection of state taxes. The Tax Injunction Act, 28 U.S.C. § 1341, provides that federal "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." The policies embodied in the Act create an impenetrable barrier to contesting state taxes in federal court. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981) (federal courts cannot entertain actions for damages under § 1983 for alleged denial of federal constitutional rights in the administration of state tax laws). This barrier derives

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[2] The case at bar concerns a fee award under 42 U.S.C. § 1988. That section, however, contemplates an underlying § 1983 claim: "In any action or proceeding to enforce a provision of Section[] . . . 1983 . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee. . . . " Thus, logically a claim for fees under § 1988 presupposes the existence of a valid § 1983 claim. *See Spencer v. South Carolina Tax Comm'n*, 281 S.C. 492, 316 S.E.2d 386 (1984), aff'd by equally divided court, 471 U.S. 82 (1985) (party cannot add § 1983 claim solely to justify fee award under § 1988).

from our system of federalism (coexistence of state and federal governmental systems) and the concept of comity (recognition of laws of other sovereigns within the system as generally binding):

> The reason for this guiding principle [of equitable restraint] is of peculiar force in cases where the suit . . . is brought to enjoin the collection of a state tax in courts of a different, though paramount sovereignty. The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere . . . with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it.

McNary, 454 U.S. at 108. Thus, as long as states provide an adequate remedy, any challenge – including one based on § 1983 – that disrupts the administration of state taxes cannot be brought in federal courts. *McNary*, 454 U.S. at 113; *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 522-26 (1981).

A state remedy providing an opportunity for a full hearing and determination of tax liability after payment is adequate. *Rosewell*, 450 U.S. at 513-14. Absent extraordinary circumstances, pay and sue-for-refund procedures are plain (*i.e.*, not uncertain), efficient (*i.e.*, no unusual hardship) and speedy (*i.e.*, no undue delay). *Rosewell*, 450 U.S. at 517-20. The Constitution requires no more. Stated another way, there is no federal right to an additional remedy when contesting a state tax.

B. State Court Jurisdiction over § 1983 Claims in Tax Matters. Although state courts generally have concurrent jurisdiction over § 1983 claims, the issue is whether that statute allows taxpayers to circumvent legislatively enacted relief schemes in state tax disputes. This Court has not addressed the issue. *See Arkansas Writers' Project v. Ragland*, 481 U.S. 221, 234 (1987). Predictably, given the variations in state tax systems and disputes, courts considering this issue have reached different results for different reasons. *See Quill Corp. v. North Dakota*, ___ N.W.2d ___ (N.D. May 11, 1993) (see App. J to Petition) (§§ 1983 & 1988 tax claims not cognizable in state court); *Spencer v. South Carolina Tax Comm'n*, 281 S.C. 492, 316 S.E.2d 386 (1984), aff'd by equally divided court, 471 U.S. 82 (1985) (taxpayers cannot use § 1983 to circumvent state remedies);[3] and *compare Burrell v. Mississippi*

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[3] Analogous decisions include: *L.L. Bean v. Bracey*, 817 S.W.2d 292 (Tenn. 1991) (state tax § 1983 claim improper since state provided adequate remedy); *Hogan v. Musolf*, 163 Wis.2d 1, 471 N.W.2d 216 (1991) (state tax § 1983 claim improper since state provided plain, adequate, complete remedy); *Nutbrown v. Munn*, 311 Or. 328, 811 P.2d 131 (1991) (state tax § 1983 claim improper since state provided adequate remedy); *Zizka v. Water Pollution Control Auth.*, 195 Conn. 682, 490 A.2d 509 (1985) (general principles of the Act apply if remedy is adequate); *Stufflebaum v. Panethiere*, 691 S.W.2d 271 (Mo. 1985) (en banc) (state tax § 1983 claim improper since state provided plain, adequate, complete remedy); *Johnston v. Gaston Co.*, 71 N.C. App. 707, 323 S.E.2d 381 (1984) (state tax § 1983 claim improper since state provided adequate remedy); *Linderkamp v. Bismarck School Dist.*, 397 N.W.2d 76 (N.D. 1986) (adequate state tax remedy precludes § 1983 relief); *Backus v. Chilivis*, 236 Ga. 500, 224 S.E.2d 370 (1976) (jurisdiction over state tax claims restricted by unique considerations including the Act); *Greenwich Township v.*

Tax Comm'n, 536 So.2d 848 (1988) (en banc) (state court has concurrent jurisdiction over § 1983 tax claim),[4] and *Bohn v. Waddell*, 790 P.2d 772 (Ariz. Tax 1990), on rehearing 807 P.2d 1 (1991) (holding § 1983 tax claims are subject to qualified immunity defense).[5] On an

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Murtagh, 601 A.2d 1352 (Pa. 1992) (general principles of the Act apply if remedies are adequate).

[4] Other courts that have entertained § 1983 tax claims include: *Beverly Bank v. Bd. of Review*, 117 Ill. App.3d 656, 453 N.E.2d 96 (1983), *cert. denied*, 466 U.S. 951 (1984) (agreed-upon federal court dismissal and refiling in state court after *McNary*); *Allison v. Bd. of Comm'rs*, 241 Kan. 266, 737 P.2d 6 (1987) (if tax is a taking without due process, state remedy not adequate); *Bung's Bar v. Township Council*, 206 N.J.Super. 432, 502 A.2d 1198 (1985) (state court has jurisdiction over § 1983 tax claim); *Harlan Sprague Dawley v. Dep't of Rev.*, 583 N.E.2d 214 (Ind. Tax 1991) (state court has jurisdiction over § 1983 tax claim).

[5] Other courts have sent mixed messages concerning § 1983 tax claims: *Dean v. State*, 250 Kan. 417, 826 P.2d 1372 (1992) (cannot use § 1983 to circumvent exhaustion requirement – no discussion of propriety of § 1983 tax claims); *Duffy v. Wetzler*, 555 N.Y.S.2d 543, 548 (1990) (allowing § 1983 claims but holding no liability unless officials participated in collection of tax); *Town of Eclectic v. Mays*, 547 So.2d 96 (Ala. 1989) (declined to award fees under § 1988 without discussing propriety of § 1983 tax claim); *Arkansas Writers' Project v. Ragland*, 293 Ark. 395, 738 S.W.2d 402 (1987) (state courts have jurisdiction over § 1983 tax claims); *Satellink of Chicago v. City of Chicago*, 168 Ill. App. 3d 689, 523 N.E.2d 13 (1988) (unconstitutional tax invalidated – no discussion of propriety of § 1983 claim although fees awarded under § 1988); *Uretsky v. Baschen*, 47 Ill. App. 3d 169, 361 N.E.2d 875 (1977) (pleading did not support § 1983 tax claim – no discussion of jurisdiction); *Porter v. Tax Collector*, 385 Mass. 335, 431 N.E.2d 934 (1982) (improper to use arrest power to collect taxes – no discussion of jurisdiction over § 1983 claim although fees awarded under § 1988); *Dep't of Treasury v. Campbell*, 161 Mich. App. 526, 411 N.W.2d 722 (1986) (state courts have

elementary level, the diversity of the results in the state courts demonstrates the need for guidance from this Court. In fact, the parties agree (Pet. 5) that the issue here is substantively the same as that in *Quill v. North Dakota*, ___ N.W.2d ___ (May 11, 1993). Since the supreme courts of Tennessee and North Dakota resolved that issue inconsistently and since the underlying issues go to the very heart of state sovereignty and our system of federalism, this Court should grant the writ to resolve these issues.

The courts that have considered the interplay between § 1983 and state taxing schemes have framed the issue as whether state courts may decline jurisdiction over § 1983 claims in tax disputes. *Amici* submit that that analysis is flawed. Although the determination of whether a particular cause of action or remedy will be available in state court is a matter for each state to decide, *Howlett v. Rose*, 496 U.S. 356, 372 (1990), that decision is a sovereign function of the legislature, not the judiciary. Accordingly, because there is no federal requirement that a state provide a remedy for contesting state taxes beyond pay and sue-for-refund schemes, if the state legislature does not create such a remedy, there is nothing to enforce through a § 1983 action. The Court should grant the writ in order to provide guidance and clarify the operation of § 1983 in the state tax context.

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concurrent jurisdiction); *Holden Arboretum v. City of Kirtland*, 19 Ohio App. 3d 125, 483 N.E.2d 167 (1984) (invalidating discriminatory tax without discussion of jurisdiction to hear § 1983 claim although fees under § 1988 discussed); *Brower v. Wells*, 103 Wash. 2d 96, 690 P.2d 1144 (1984) (en banc) (foreclosure sale required due process notice).

C. The Reach of § 1983. Significantly, the language of § 1983 "falls far short" of that required to disturb the usual constitutional balance of powers between the state and federal governments. *Will*, 491 U.S. at 65, citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985), and noting that although *Atascadero* was an Eleventh Amendment case, its reasoning also applies to § 1983. *See also Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984). That balance contemplates federal non-intervention in the administration of state taxes even if the tax itself is alleged to be unconstitutional. *See generally Rosewell*, 450 U.S. at 523. As noted above, federal due process requires only the opportunity to seek a tax refund in a full judicial hearing. *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 37-9 (1990). A state has no obligation to create additional remedies concerning the payment of taxes. Moreover, since the purpose of § 1983 was to interpose *federal courts* between citizens and states and that statute does not create substantive rights, requiring state courts to hear § 1983 claims regarding state taxes that could not be heard in federal court and that have not been sanctioned by the state legislature would not advance any relevant purpose. *See Quill* (see App. J to Petition); *Spencer*, 316 S.E.2d at 386.

This Court has recognized that damage claims against tax officials have chilling effects on the administration of state tax systems. *McNary*, 454 U.S. at 113-15. Logically, all forms of § 1983 relief, including § 1988 fee awards, will have the same effect. Indeed, taxpayers now routinely include federal counts in cases otherwise completely controlled by state tax law solely to preserve the

opportunity to recover fee awards. Thus, *amici* fully support the underlying theme of Petitioners' case – states may legislatively preclude or limit § 1983 remedies in tax disputes, provided they afford taxpayers a plain, speedy, efficient remedy. As indicated by the above discussion, that proposition is ripe for consideration, and resolution, by this Court.

II. IF § 1983 RELIEF IS AVAILABLE IN STATE TAX DISPUTES, THIS COURT SHOULD GRANT THE PETITION TO CLARIFY THE APPLICATION OF § 1983 PRINCIPLES IN THAT CONTEXT

A. Introduction. Alternatively, if states must provide § 1983 remedies in state tax actions, this case affords the opportunity to clarify how § 1983 principles developed in non-tax cases will apply in disputes involving contested issues of state tax law. For example, in *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103 (1989), this Court noted that alternate remedial schemes authorized by Congress can preclude § 1983 relief, and in *Farrar v. Hobby*, ___ U.S. ___, 113 S. Ct. 566 (1992), this Court held that prevailing parties are not always entitled to attorney's fees under § 1988. The reach of those decisions will undoubtedly be explored as the states and taxpayers grapple with the questions left open by decisions such as *Quill Corp. v. North Dakota*, ___ U.S. ___, 112 S. Ct. 1904 (1992)[6] and *Wisc. Dep't of Rev. v. Wrigley*,

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[6] *See* Kulwicki, *State Taxation of Interstate Mail Order Sellers: What Lies Ahead After Quill?*, Vol. 3, No. 14, State Tax Notes, 495, 498 (Oct. 5, 1992).

___ U.S. ___, 112 S. Ct. 2447 (1992).[7] Under the decision below, however, the resolution of such questions likely will disrupt the collection of state taxes, because every time a court invalidates any part of an assessment based on an issue left unresolved by prior cases, states will be faced with a claim for attorney's fees based on § 1988.

B. Alternate State Remedy May Preclude § 1983 Relief. When Congress provides a comprehensive enforcement mechanism for the protection of a federal right, relief under § 1983 is not available. *Golden State*, 493 U.S. at 106-107. While our system of federalism does not contemplate a nationwide mechanism for administering state taxes, Congress long ago decreed that states may implement pay and sue-for-refund schemes. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943) (upholding Louisiana's scheme requiring paying tax and filing refund suit). The question, therefore, becomes whether allowing taxpayers to bring § 1983 actions disrupts a scheme that this Court's decisions (*e.g., McNary; Rosewell*) suggest that Congress has sanctioned. *Golden State*, 493 U.S. at 107, citing *Smith v. Robinson*, 468 U.S. 992, 1012 (1984). *Amici* believe it does.

This Court's rejection of remedies that interfere with the administration of state tax systems indicates that Congress has endorsed – by the express terms of the Act – an enforcement mechanism that allows states to postpone the redress of invalid taxes and requires taxpayers to file refund actions rather than federal damage claims.

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[7] *See* Christopher and Janaszek, *Limitations on State Income Taxation of Interstate Businesses after Wrigley and Quill*, Vol. 11, No.4, Journal of State Taxation, 9, 18-20 (Spring, 1993).

Forcing states to allow § 1983 claims in state courts would clearly disrupt this long-recognized practice. As noted previously, this Court has stated that the only constitutionally required prerequisite for a state remedy is that it be plain, speedy and efficient, *i.e.*, that it provide the opportunity for a full judicial hearing during which all claims can be presented. *Rosewell*, 450 U.S. at 517-520. With respect to a state's administration of its own tax system, no further federal requirements apply. In short, there is a Congressionally-endorsed mechanism for relief in state tax matters, and states need not provide § 1983 remedies therefor.[8] Granting the writ would allow this Court to consider that argument and clarify an important issue concerning our system of federalism.

C. Prevailing Parties Not Always Entitled to Attorney's Fees. Section 1988 did not create any new right to attorney's fees. *Hobby*, 113 S. Ct. at 577 (O'Conner, concurring). Moreover, fee awards are discretionary thereunder. *Id.* at 575. Indeed, "[i]n some circumstances, even a plaintiff who formally 'prevails' under § 1988 should receive no attorney's fees at all." *Id.* Several factors control the propriety of fee awards under § 1988. Obviously,

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[8] That would not be a novel result. Under *Parratt v. Taylor*, 451 U.S. 527 (1981), there is no § 1983 remedy for unauthorized, random acts that violate due process rights if a state provides adequate post-deprivation remedies. In such circumstances, states do not have the ability, or the obligation, to provide pre-deprivation remedies. Significantly, the remedy provided need not be equivalent to the § 1983 remedy. *Parratt*, 451 U.S. at 544. Post-deprivation remedies are also sufficient in tax disputes. *McKesson*, 496 U.S. 37. Under the logic of *Parratt*, such post-deprivation remedies need not be equivalent to § 1983 remedies.

the overall degree of success obtained is important. *Id.* at 574. Additionally, "special circumstances" may render a fee award unjust even for a prevailing party. *Id.* at 576. *Amici* believe that those considerations preclude fee awards both in this case and in the overall context of state tax disputes.

Although Bloomingdale's achieved more than a mere nominal victory, under *Hobby* it should not recover attorney's fees in this case. First, Petitioners also fit within the parameters of a "prevailing party" under *Hobby*. The acceptance of Petitioners' theory that forcing cataloguers to collect use taxes on goods shipped into Tennessee did not violate the due process clause overturned twenty-five years of precedent. That victory will affect the relationship between the parties since it implies that Petitioners can enforce subpoenas for records in state court.[9] In sum, Petitioners achieved a substantial measure of success.

Significantly, the language of § 1988 does not mandate awards to prevailing parties. Thus, a fee award to Bloomingdale's is not required in this case. Here, Petitioners reasonably might argue that they achieved a greater degree of success in overturning twenty-five years of due process precedent than did Bloomingdale's.[10] In any event, the plaintiff's overall success is

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[9] Since due process permits claimants to force foreign retailers to defend tort claims in state court, *Quill* presumably indicates that state tax officials can require foreign cataloguers to defend summons enforcement proceedings in state court.

[10] The majority opinion even suggested that the Court may have rejected the commerce clause claim if it had been considering that issue for the first time. *Quill*, 112 S. Ct. at 1912.

a relative measure that necessarily must account for the defendant's overall success.

Moreover, *amici* assert that at least in the context of state tax disputes, the concepts of federalism and comity constitute the type of "special circumstances" that this Court suggested in *Hobby* can preclude fee awards. It is fairly easy to identify an appropriate and yet workable standard to govern § 1988 fee awards in state tax disputes. For example, the basic rationale for the federal policy of non-intervention in state tax matters (the concepts of federalism and comity) suggests that attorney's fees should not be available in any case in which the state official could prevail on a claim of qualified immunity if the official had been sued in his or her individual capacity.[11] Utilizing the qualified immunity standard has several points to commend it. First, it dovetails nicely with current § 1983 jurisprudence. Second, courts have experience in applying it. More importantly, it would preclude fee awards, and the associated disruption of state tax administration, unless the assessment is clearly contrary to law. Finally, since § 1988 was never intended to serve as a windfall for lawyers, it does not offend the overall purpose of the statute. *Hobby*, 113 S. Ct. at 578.

Although *amici* believe that, as a matter of federalism, states do not have to allow § 1983 claims or provide equivalent relief in state tax disputes, if the rule is otherwise, *amici* urge this Court to use this case to define the

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[11] Officials are entitled to qualified immunity unless the contours of the right at issue are so clearly established that any reasonable person would understand that the action taken violated that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

operation of § 1983 in this context and thus limit the disruptions that the sovereign states must bear. If those disruptions include entertaining § 1983 claims in state tax disputes, then *amici* ask this Court to consider all appropriate limitations thereon, including adopting a suitable standard for precluding fee awards as discussed above.

CONCLUSION

For the reasons contained herein, *amici* request that this Court grant plenary review to consider the interplay between the concepts of comity and federalism and §§ 1983 and 1988 and the resulting effects on the states' sovereign right to adopt, administer and collect their own taxes.

Respectfully submitted,

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